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No. 86-1045

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1986

CARL WHORTON, et al.,
*Petitioners,*
*vs.*
SURTRAN TAXICABS, INC., et al.,
*Respondents.*

**On Petition for Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit**

## BRIEF OF RESPONDENT CITY OF GRAPEVINE, TEXAS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

I. In ruling that the municipal and private respondents' activities were immune from antitrust scrutiny by virtue of the state action exemption, did the district court and the Fifth Circuit respectively render and adopt a decision, based in part upon a validating state statute, which conflicted with applicable decisions of this Court or other federal courts of appeal?

II. Was the decision to retroactively apply the Local Government Antitrust Act of 1984, thereby precluding recovery against the cities under the Clayton Act for damages, interest on damages, costs and attorneys' fees, clearly erroneous?

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## BRIEF OF RESPONDENT CITY OF GRAPEVINE, TEXAS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUSTICES OF SAID COURT:

Respondent City of Grapevine, Texas, respectfully submits the following brief in opposition to the petition for writ of certiorari.

## OPINIONS BELOW

The opinion of the United States District Court for the Northern District of Texas, which dismissed all claims in this litigation, is reported at 615 F.Supp. 344 (1985), and appears as Appendix A to the per curiam opinion of the United States Court of Appeals for the Fifth Circuit, reported at 801 F.2d 159 (1986). That per curiam opinion, which affirmed the judgment of the district court, is attached as Appendix A to the petition for writ of certiorari.

## RELEVANT STATUTORY PROVISIONS

The following statutory provisions, omitted from the petition for writ of certiorari, are relevant for this Court's consideration:

Tex.Rev.Civ.Stat.Ann. art 46d-14(a), (b) and (c) (Vernon 1969) (Texas Municipal Airports Act).

Tex.Rev.Civ.Stat.Ann. art. 1175 (20) and (21) (Vernon 1963).

Relevant portions appear herein at Appendix A.

## STATEMENT OF THE CASE

Although Petitioners' recitation of the Statement of the Case is reasonably accurate, it wholly fails to address or even cite the cornerstone of the district court's opinion dismissing the action, Tex.Rev.Civ.Stat.Ann. art. 1175 (20) and (21) (Vernon 1963) and Tex.Rev.Civ.Stat.Ann. art. 46d-14(a), (b) and (c) (Vernon 1969) (Texas Municipal Airports Act).

## SUMMARY OF ARGUMENT

The petition for writ of certiorari should be denied because the district court's opinion, affirmed by the Fifth Circuit, employed the appropriate foreseeability standard

urged herein by Petitioners (hereafter "Whorton") and established by this Court in *Town of Hallie v. City of Eau Claire*, 471 U.S. ____, 85 L.Ed.2d 24, 105 S. Ct. 1713 (1985). In concurring with the post-*Town of Hallie*, Fifth Circuit analysis in *Independent Taxicab Drivers' Employees v. Greater Houston Transportation Co.*, 760 F.2d 607 (5th Cir.), *cert. denied*, ____ U.S. ____, 88 L.Ed.2d 230 (1985), a case involving an exclusive taxicab franchise at the City of Houston airport, the district court discerned a "clearly articulated and affirmatively expressed state policy" as evidenced by the Texas home rule statute and the Texas Municipal Airports Act, both in existence before the inception of the complained of activities at the Dallas/Fort Worth Regional (hereafter "D/FW") Airport. The broad phrasing of the statutory language was a strong indication of the state's desire to give its cities the authority to manage and operate their airports, including ground transportation services. The district court correctly concluded that the displacement of competition through anticompetitive measures in the area of taxicab services to municipal airports was a logical and reasonable consequence of the allocation of this authority, and that the cities were immune from liability by virtue of the state action exemption.

Whorton also contends that the Local Government Antitrust Act of 1984 did not authorize the district court to consider alternative relief against the private respondents as a ground for denying relief against the cities, and that the fashioning of an alternative equitable remedy against the cities should have been a prerequisite to the retroactive grant of immunity to those same parties. Whorton cannot succeed here because this argument, not having been raised before the Fifth Circuit, has not been preserved for review by this Court. His theory also is substantively unpersuasive because the plain language of the Act instructs the court to

consider the application of the Act "in light of all the circumstances," which was done in this instance. Finally, the invalidity of Whorton's proposition notwithstanding, this aspect of the district court's decision could at most constitute harmless error, because the dismissal of the cities pursuant to the Act was effected independent of the state action exemption doctrine. The petition for writ of certiorari should be denied.

## ARGUMENT AND AUTHORITIES

### I. IN HOLDING THAT THE MUNICIPAL AND PRIVATE RESPONDENTS' ACTIVITIES WERE IMMUNE FROM ANTITRUST SCRUTINY BY VIRTUE OF THE STATE ACTION EXEMPTION, THE DISTRICT COURT AND THE FIFTH CIRCUIT FOLLOWED THE FORESEEABILITY TEST ESTABLISHED IN *TOWN OF HALLIE,* AND RELIED UPON RELEVANT STATE POLICY WHICH EXISTED PRIOR TO THE COMPLAINED OF ACTIVITIES.

In *Parker v. Brown,* 317 U.S. 341, 87 L.Ed.2d 315, 63 S.Ct. 307 (1943), the Supreme Court established that the Sherman Act did not apply to the anticompetitive conduct of a state acting through its legislature. *Id.* at 350-51. More recently, this Court unanimously decided that the state action exemption applies to municipalities whenever the state legislature has "clearly articulated and affirmatively expressed" a state policy to displace competition in a regulated area, that is, whenever "the legislature contemplated the kind of action complained of." *Town of Hallie, supra. See also Southern Motor Carriers Rate Conference v. United States,* 471 U.S. 48, 85 L.Ed.2d 36, 105 S.Ct. 1721 (1985). Putting to rest any ambiguity which may have arisen following its decisions in this area during the previous decade,

*see, e.g., City of Lafayette, Louisiana v. Louisiana Power & Light Co.*, 435 U.S. 389, 55 L.Ed.2d 364, 98 S.Ct. 1123 (1978), *Community Communications Co. v. City of Boulder, Colorado*, 455 U.S. 40, 70 L.Ed.2d 810, 102 S.Ct. 835 (1982), the Court emphasized that "compulsion affirmatively expressed . . . is by no means a prerequisite to a finding that a municipality acted pursuant to a clearly articulated state policy," and that "the active state supervision requirement should not be imposed in cases in which the actor is a municipality." *Town of Hallie*, 471 U.S. at ____ , 85 L.Ed.2d at 33-34.

In *Independent Taxicab, supra,* a case appropriately deemed "virtually indistinguishable" by the district court in the instant action, *Woolen v. Surtran Taxicabs, Inc.*, 615 F.Supp. 344, 346 (N.D. Tex 1985), *aff'd per curiam*, 801 F.2d 159, 161 (5th Cir. 1986), the Fifth Circuit upheld the lower court's dismissal of all antitrust claims where the City of Houston had granted a taxicab company exclusive dominion over passenger service at the airport. The Court's analysis focused upon the relevant provisions of the Texas home rule statute, Tex.Rev.Civ.Stat.Ann. art. 1175 (20) and (21) (Vernon 1963), and the Texas Municipal Airports Act, Tex.Rev.Civ.Stat.Ann. art 46d-1, et seq. (Vernon 1969), which pursuant to *Town of Hallie, supra,* provided the clearly articulated and affirmatively expressed state policy of deference to "municipal prescience with regard to airport management." *Independent Taxicab,* 760 F.2d at 610.

As viewed by the Court, the state legislature had granted its cities extensive regulatory authority over the taxicab industry within and without city limits, including the power to "license and fix the charges or fares" for all transportation for hire. Tex.Rev.Civ.Stat.Ann. art 1175 (20) and (21). *See also Independent Taxicab,* 760 F.2d at 610. More

specifically, however, art. 46d-4 of the Texas Municipal Airports Act, enacted in 1947, conferred upon cities the authority to "enter into contracts, leases and other arrangements" for the provision of "goods, commodities, things, services or facilities" at municipal airports. A municipality was further authorized to "establish the terms and conditions and fix the charges, rentals or fees for the privileges or services." Tex.Rev.Civ.Stat.Ann art. 46d-4(a)(2). The Fifth Circuit found the broad phrasing of these statutes to be a strong and legally sufficient indication of the state's desire to allocate authority to Texas cities to manage their airports. *Independent Taxicab,* 760 F.2d at 610-11.

In refuting the "regulatory void" argument asserted by Whorton in the present action, the district court scrutinized and relied upon this same body of statutory law, in existence before this lawsuit began, and interpreted it in light of the most recent pronouncements of this Court and the Fifth Circuit. The court also considered validating legislation passed in 1983 as an additional basis in support of its decision, which Whorton mischaracterizes both as a newly created, jurisprudentially repugnant "retroactive test of ratification" (Pet. at 7), and as the *sine qua non* of the court's rationale (Pet. at 8-9).

The court reviewed § 14 of the Municipal Airports Act, which was amended in 1983 to provide as follows:

> (d)(6) Taxicab Licensing. A joint airport board established pursuant to this Act shall have power to license taxicabs picking up passengers at or delivering passengers to the airport.
>
> (7) Regulations. Any resolutions, rules, regulations, or orders of the joint airport board dealing with subjects

> authorized by Subdivision (65) of this subsection become effective only upon approval of the governing bodies of the constituent public agencies.

Tex.Rev.Civ.Stat.Ann. art 46d-14(d)(6) and (7) (Vernon Supp. 1985). This legislation was cited as an obvious indication of state policy, particularly so when considered in conjunction with § 2 of the Municipal Airports Act Amendments of 1983, 1983 Tex.Gen. Laws, ch. 978, at 5322:

> Any and all contracts, leases, or other arrangements for the use or occupancy of airport property executed by joint boards created under the Municipal Airports Act (Art. 46d-1 et seq., Vernon's Texas Civil Statutes), and all provisions thereof, and executed prior to the effective date of this Act, are hereby validated and confirmed and the same are fully effective and represent the lawful agreements and undertakings of joint boards in accordance with the terms thereof.

Despite Whorton's contention that governmental entities were without power to regulate taxicab service at D/FW Airport before § 14 was amended in 1983, the opposite is true. That amendment clarified the role of joint airport boards in regulating taxicab service at joint airports because of uncertainties which may have existed from concurrent legislation concerning the role of the Railroad Commission in establishing licensing requirements pursuant to Tex.Rev.Civ.Stat.Ann. art. 911a (Texas Motor Bus Act). By validating and confirming a joint board's power to regulate prior to that legislation's amendment, the state recognized the existence of such power, effectively vitiating Whorton's "regulatory void" argument.

The court noted the unwavering validity of D/FW Airport's single-operator concept, born of the original

agreement between the Airport Board and the Cities of Dallas and Fort Worth. As the court concluded on this issue,

> the validation statute, by validating and confirming the contracts in question, is an adequate indication of the state's desire to allow joint airport boards to displace competition through anticompetitive measures in the area of taxicab services to municipal airports.

*Woolen v. Surtran Taxicabs, Inc.*, 801 F.2d at 163.

Whorton mistakenly contends that the Fifth Circuit has adopted an impermissible, exclusive retroactive test in determining whether state action immunity applies to local governments, and fails to accurately present the essential legislative basis upon which the district court relied. Both the statutory law preexisting the complained of activity as well as clarifying legislation enacted after the institution of the lawsuit were considered by the court. This thoughtful approach cannot be characterized as either improper or unique. *See Campbell v. City of Chicago,* 639 F.Supp. 1501, 1507-08, n. 10 (N.D. Ill. 1986) (legislation enacted after complaint filed in taxicab antitrust lawsuit cited as "useful and relevant in understanding the legislative meaning" of authorizing provision). This Circuit's test remains one based upon a standard of foreseeability, and is consonant with the standard established by this Court and followed by other federal courts of appeal. *See Mercy-Peninsula Ambulance v. San Mateo County,* 791 F.2d 755, 756-57 (9th Cir. 1986); *Cine 42nd Street Theater Corp. v. Nederland Org.,* 790 F.2d 1032, 1038-44 (2nd Cir. 1986); *Auton v. Dade City, Florida,* 783 F.2d 1009, 1010 (11th Cir. 1986); *LaSalle Nat'l. Bank of Chicago v. County of DuPage,* 777 F.2d 377, 380-81 (7th Cir. 1985), *cert. denied,* __U.S.__, 90 L.Ed.2d 979 (1986); *Massachusetts Furniture & Piano Movers Ass'n. v. F.T.C.,* 773

F.2d 391, 394-95 (1st Cir. 1985); *L & H Sanitation v. Lake City Sanitation,* 769 F.2d 517, 520-21 (8th Cir. 1985). The petition for writ of certiorari should be denied. *See* U.S. Sup. Ct. Rules 17.1 and 21.5, 28 U.S.C.

## II. NO GROUND EXISTS FOR REVIEW OF THE RETROACTIVE APPLICATION OF THE LOCAL GOVERNMENT ANTITRUST ACT OF 1984 BECAUSE WHORTON FAILED TO PRESERVE THIS ISSUE ON APPEAL, AND THE DISTRICT COURT PROPERLY CONSIDERED ALL RELEVANT CIRCUMSTANCES IN ACCORDANCE WITH THE CLEAR LANGUAGE OF THE ACT.

Whorton proposes that the Fifth Circuit's judgment is reviewable because the adoption of the district court's reasoning was erroneous in two respects relative to the application of the Local Government Antitrust Act of 1984, 15 U.S.C. §35 (hereafter "the Act"). The Act provides that local governments shall be immune from payment of damages, costs or attorneys' fees for antitrust violations. 15 U.S.C. §35(a). It is not applicable to cases commenced prior to September 24, 1984 unless "it would be inequitable not to apply [the Act] to a pending case." 15 U.S.C. §35(b).

Whorton urges first that an erroneous legal standard was employed by weighing alternative relief against the private respondents as a ground for denying total relief against the cities (Pet. at 15-16), and secondly that the proper construction of the Act would be to fashion an appropriate retrospective equitable remedy against the cities as an equitable condition to the retroactive grant of immunity from the damages remedy (Pet. at 18).

Whorton's argument must fail for three reasons. These issues were neither raised nor briefed before the Fifth Circuit and therefore have not been properly preserved for

review by this Court. Furthermore, because the district court's analysis proceeded as though the state action exemption did not apply, thereby making the availability of alternative relief pursuant to the Act a reality as an alternative ground for dismissal, the basis of that aspect of the decision could present at most harmless error. Finally, the cities sustained their burden of proof that it would be inequitable not to apply subsection (a) of the Act "in light of all the circumstances." *See* 15 U.S.C. §35(b).

It is well established that an issue not raised before and addressed by a federal court of appeals is not preserved for review by this Court. *E.E.O.C. v. F.L.R.A.*, __U.S.__, 90 L.Ed.2d 19, 24, 106 S.Ct. 1678 (1986); *Rogers v. Lodge,* 458 U.S. 613, 628, n. 10, 73 L.Ed.2d 1012, 1025, 102 S.Ct. 3272, 3281 (1982). A liberal reading of the Whorton appellate brief before the Fifth Circuit fails to evince the argument now raised by the petition. Consequently, Whorton has waived his right to present this argument to the Court.

Even should this Court for the moment look beyond the inherent procedural deficiency attendant to Whorton's argument, review is not proper because the district court's decision not to award damages against the cities was an alternative and not an exclusive basis for dismissal. Such decision would constitute at most harmless error, and therefore is not clearly erroneous.

The most important aspect, however, for this Court's consideration is that the "careful opinion" of the district court, *Woolen v. Surtran Taxicabs, Inc.*, 801 F.2d at 159, was proper and extremely thorough in its review of all relevant circumstances, including the stage of the litigation, the availability of alternative relief under the Clayton Act, the cities' exercise of normal regulatory authority pursuant to

state law, and the financial harm of a potential treble damages award. The municipal respondents sustained their burden by showing that merits discovery had not been completed in 1985, as Whorton concedes, *see* Pet. at 15, n. 2, that completion of pretrial discovery would take "at least another year," *Woolen v. Surtran Taxicabs, Inc.*, 801 F.2d at 166, and that none of the prima facie exceptions to retroactive application was present in this case. The Court also determined that the Act was applicable because Whorton was not without potential alternative relief under the Clayton Act if the municipal respondents were dismissed from the case. The private respondents would remain and could be held liable for monetary damages, provided they were not otherwise exempt from the antitrust laws. *See, e.g., Pontarelli Limousine, Inc. v. City of Chicago,* 623 F.Supp. 281, 283 (D.C. Ill. 1985); *S. Kane & Son, Inc. v. W. R. Grace & Co.*, 623 F.Supp. 162, 163 (E.D. Pa. 1985); *TCI Cablevision, Inc. v. City of Jefferson, Missouri,* 604 F.Supp. 845, 846 (W.D. Mo. 1984). Furthermore, injunctive relief still would be available against the municipal respondents if they excluded the cab drivers from participating in picking up passengers at D/FW Airport.

Additional support for retroactively applying the Act was based upon the fact that the cities plainly were exercising their normal regulatory authority and were acting in furtherance of state law in implementing the challenged system. The district court also accurately observed that a potential $7,000,000 actual damages award trebled by law to $21,000,000, exclusive of interest, costs and attorneys' fees, even if shared with the private respondents, would have "an adverse impact on any community in this country and would be totally at odds with the spirit and intent of the Act." *Woolen v. Surtran Taxicabs, Inc.*, 801 F.2d at 167, quoting

*Jefferson Disposal Co. v. Parish of Jefferson, Louisiana*, 603 F.Supp. 1125, 1135 (E.D. La. 1985). The determination that it would be inequitable not to apply subsection (a) of the Act was proper.

The construction of the Act which Whorton now proposes finds absolutely no support in the plain language or the legislative history of the Act, *see Woolen v. Surtran Taxicabs, Inc.*, 801 F.2d at 166-67, or in *Wetzel v. Liberty Mutual Ins. Co.*, 508 F.2d 239 (3rd Cir.), *cert. denied*, 421 U.S. 1011 (1975), a case cited as authority by Whorton which fails to mention the Act and instead discusses the relief available to a class certified pursuant to Fed.R.Civ.P. 23(b)(2) in a Title VII sexual discrimination case.

Whorton's theory of municipal immunity based solely upon preexisting alternative equitable relief against the local government cannot be entertained because it was not properly preserved for review by this Court. Alternatively, the argument must fail because it has no substantive merit. The district court's finding as affirmed by the Fifth Circuit was not clearly erroneous, and should be upheld.

## CONCLUSION AND PRAYER

For the above reasons, Respondent City of Grapevine, Texas respectfully prays that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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# APPENDIX A

## LIST OF RELEVANT STATUTES

## TEXAS MUNICIPAL AIRPORTS ACT
## (Enacted 1947, effective until 1981 amendment)

Art. 46d-14. Joint operations.

(a) Authorization. For the purposes of this Section, unless otherwise qualified, the term "public agency" includes municipality, as defined in this Act,[1] any agency of the State government and of the United States, and any municipality, political subdivision and agency of another State; and the term "governing body" means the governing body of a county or municipality, and the head of the agency if the public agency is other than a county or municipality. All powers, privileges and authority granted to any municipality by this Act may be exercised and enjoyed jointly with any public agency of any other State or of the United States to the extent that the laws of such other State or of the United States permit such joint exercise or enjoyment. If not otherwise authorized by law, any agency of the State government when acting jointly with any municipality, may exercise and enjoy all of the powers, privileges and authority conferred by this Act upon a municipality.

(b) Agreement. Any two (2) or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this Act and any two (2) or more municipalities are specially authorized to make such agreement or agreements as they may deem necessary for the joint acquisition and operation of airports and air navigation facilities. Concurrent action by ordinance, resolution or otherwise of the governing bodies of the participating public agencies shall constitute joint action. Each such agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities

[1]Articles 46d-1 to 46d-22.

and privileges involved, the proportion to be borne by each public agency of preliminary costs and costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport or air navigation facility, the proportion of the expenses of maintenance, operation, regulation and protection thereof to be borne by each and such other terms as are required by the provisions of this Section. The agreement may also provide for: amendments thereof, and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities and privileges jointly owned, prior to or upon said property, facilities and privileges, or any part thereof, ceasing to be used for the purposes provided in this Act, or upon termination of the agreement; the distribution of the proceeds received upon any such disposal, and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

(c) Joint Board. Public agencies acting jointly pursuant to this Section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed, their term and compensation, if any, shall be provided for in the joint agreement. Each such joint board shall organize, select officers for terms to be fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled and operated, and such board may exercise on behalf of its constituent public agencies all the powers of each with respect to such airport, air navigation facility or airport hazard, subject to the limitations of Subsection (d) of this Section.

(d) Limitations on Joint Board.

(1) Expenditures. The total expenditures to be made by the joint board for any purpose in any calendar year shall be determined by a budget approved by the governing bodies of its constituent public agencies on or before the preceding December 1st.

(2) Acquisitions Beyond Sums Allotted. No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums therefor fixed by the joint agreement or allotted in the annual budget, may be acquired by the joint board without the approval of the governing bodies of its constituent public agencies.

(3) Eminent Domain. Eminent domain proceedings under this Section may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common until conveyed by them to the joint board.

(4) Disposal of Real Property. The joint board shall not dispose of any airport, air navigation facility or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, provided that the joint board may, without such consent, enter into the contract, lease or other arrangements contemplated by Section 4 of this Act.[2]

(5) Police Regulations. Any resolution, rules, regulations, or orders of the joint board dealing with subjects authorized by Section 7 of this Act[3] shall become effective only upon approval of the governing bodies of the constituent public agencies provided that upon such approval, the resolutions, rules, regulations or orders of the joint board shall have the same force and effect in the territories or jurisdictions

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[2]Article 46d-4.
[3]Article 46d-7.

involved as the ordinances, resolutions, rules, regulations or orders of each public agency would have in its own territory or jurisdiction.

(e) Joint Fund. For the purpose of providing a joint board with moneys for the necessary expenditures in carrying out the provisions of this Section, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Each of the constituent public agencies shall provide its share of the fund from sources available to each. Any Federal, State or other contributions or loans, and the revenues obtained from the joint ownership, control and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in Subsection (d) of this Section.

Acts 1947, 50th Leg., p. 188, ch. 114, §14.

# TEXAS MUNICIPAL AIRPORTS ACT
## (As Amended, 1985)

Art. 46d-14. Joint Operations.

(a) Authorization. For the purposes of this Section, unless otherwise qualified, the term "public agency" includes municipality, as defined in this Act, any agency of the State government and of the United States, and municipality, political subdivision and agency of another State; and the term "governing body" means the governing body of a county or municipality, and the head of the agency if the public agency is other than a county or municipality and the term "airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this Act. All powers, privileges and authority granted to any municipality by this Act may be exercised and enjoyed jointly with any public agency of any other State or of the United States to the extent that the laws of such other State or of the United States permit such joint exercise or enjoyment. If not otherwise authorized by law, any agency of the State government when acting jointly with any municipality, may exercise and enjoy all of the powers, privileges and authority conferred by this Act upon a municipality.

(b) Agreement. Any two (2) or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this Act and any two (2) or more municipalities are specially authorized to make such agreement or agreements as they may deem necessary for the joint acquisition and operation of airports, air navigation facilities, or airport hazard areas. Concurrent action by ordinance, resolution or otherwise of the governing bodies of the participating public agencies shall constitute joint action. Each such agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities and privileges involved, the proportion to be borne by each public agency of preliminary costs and

costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport, air navigation facility, or airport hazard area, the proportion of the expenses of maintenance, operation, regulation and protection thereof to be borne by each and such other terms as are required by the provisions of this Section. The agreement may also provide for: amendments thereof, and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities and privileges, jointly owned, prior to or upon said property, facilities and privileges or any part thereof, ceasing to be used for the purposes provided in this Act, or upon termination of the agreement; the distribution of the proceeds received upon any such disposal, and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

(c) Joint Board. Public agencies acting jointly pursuant to this Section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed, their term and compensation, if any, shall be provided for in the joint agreement. Each such joint board shall organize, select officers for terms to be fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police any airport, air navigation facility, or airport hazard area to be jointly acquired, controlled and operated, and such board may exercise on behalf of its constituent public agencies all the powers of each with respect to such airport, air navigation facility or airport hazard area, subject to the limitation of Subsection (d) of this Section.

(d) Limitations on Joint Board.

(1) Expenditures. The total expenditures to be made by the joint board for any purpose in any calendar year shall be determined by a budget approved by the governing bodies of its constituent public agencies on or before the preceding December 1st.

(2) Acquisition Beyond Sums Allotted. No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums therefor fixed by the joint agreement or allotted in the annual budget, may be acquired by the joint board without the approval of the governing bodies of its constituent public agencies.

(3) Eminent Domain. Eminent domain proceedings under this Section may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common until conveyed by them to the joint board.

(4) Disposal of Real Property, Use of Property by Others. The joint board shall not dispose of any airport, air navigation facility or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies. However, the joint board may, without consent, enter into contracts, leases, or other arrangements for the use and occupancy by others of airport lands and personal property for the purposes specified in Section 4 of this Act upon such terms, for such rentals, revenues, and payments, and for such period or periods of years and with such options of renewal, as shall be approved by the joint board. It is provided, however, that if any such contract, lease, or other arrangement shall be for a term, including any renewal or option terms, in excess of 40 years, the same shall be subject to the approval of each of the governing bodies of the constituent public agencies of the joint board unless the necessity for such approval is waived by resolution of each such governing body.

(5) Police Regulations. Any resolutions, rules, regulations, or orders of the joint board dealing with subjects authorized by Section 7 of this Act shall become effective only upon approval of the governing bodies of the constituent public agencies provided that upon such approval, the resolutions, rules, regulations, or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinances, resolutions, rules, regulations or orders of each public agency would have in its own territory or jurisdiction.

(6) Taxicab Licensing. A joint airport board established pursuant to this Act shall have power to license taxicabs picking up passengers at or delivering passengers to the airport and to charge and collect fees with respect to the issuance of licenses under this subdivision.

(7) Regulations. Any resolutions, rules, regulations, or orders of the joint board dealing with subjects authorized by Subdivision (6) of this subsection become effective only upon approval of the governing bodies of the constituent public agencies. Upon the approval, the resolutions, rules, regulations, or orders of the joint board have the same force and effect in the territories or jurisdictions involved as the ordinances, resolutions, rules, regulations, or orders of each public agency would have in its own territory or jurisdiction.

* * *

Subsecs. (a) to (c) amended by Acts 1981, 67th Leg., p. 852, ch. 300 §2, eff. Aug. 31, 1981;

Subsec. (d) amended by Acts 1983, 68th Leg., p. 5322, ch. 978, §1, eff. Sept. 1, 1983;

Subsec. (d)(6), (7) added by Acts 1983, 68th Leg., p. 4022, ch. 626, §2, eff. Sept. 1, 1983;

Subsec. (d)(6) amended by Acts 1985, 69th Leg., ch. 268, §2, eff. June 5, 1985.

Tex.Rev.Civ.Stat.Ann. art. 1175 (20) and (21)(Vernon 1963):

Cities adopting the charter or amendment hereunder shall have full power of local self-government, and among the other powers that may be exercised by any such city the following are hereby enumerated for greater certainty:

* * *

20. To license, operate and control the operation of all character of vehicles using the public streets, including motorcycles, automobiles or like vehicles, and to prescribe the speed of the same, the qualification of the operator of the same, and the lighting of the same by night and to provide for giving bond or other security for the operation of the same.

21. To regulate, license and fix the charges or fares made by any person owning, operating or controlling any vehicle of any character used for the carrying of passengers for hire or the transportation of freight for hire on the public streets and alleys of the city.